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IN THE

Supreme Court of the United States

October Term, 1984

SCOTT CHAPMAN, PETITIONER,

v.

JOAB L. THOMAS AND
THOMAS H. STAFFORD, RESPONDENTS.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

LACY H. THORNBURG
Attorney General

Edwin M. Speas, Jr.
Special Deputy Attorney General

Thomas J. Ziko
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
(919) 733-7387
Attorneys for Respondents

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STATEMENT OF THE CASE

Pursuant to Rule 34.2 the respondents join in the petitioner's Statement of the Case, except that portion of same wherein the petitioner alleges that the Solicitation Policy at issue "was interpreted as preventing, and enforced to prevent, Chapman or any NCSU [North Carolina State University] student from personally approaching another student on a one-to-one basis either in the dormitory hallways or in the student's room to invite that student to a discussion of Scripture...." Petition, p. 4-5. There is nothing in the record to indicate that the Solicitation Policy was ever interpreted as preventing or enforced to prevent any activity not specifically

proscribed in the policy. The Solicitation Policy specifically prohibits door-to-door solicitation in the residential portion of the NCSU dormitories. Appendix to Petition, p. 24a. The petitioner was prosecuted in the NCSU student courts for conducting a door-to-door solicitation in one of the residence halls. There is nothing in the record to indicate that the petitioner or any other student was prosecuted for speaking to another student in a dormitory hallway or for speaking to a student in his room, provided the invitation to enter the student's room was not the result of a door-to-door solicitation. Appendix to Petition, p. 12a.

SUMMARY OF ARGUMENT

The court below held that North Carolina State University Solicitation Policy which prohibited all door-to-door solicitations, except door-to-door campaigns conducted by candidates for student government office, did not violate the petitioner's First Amendment right to freedom of speech. The court based its decision on this Court's analysis and holding in *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37 (1983). The lower court approriately followed that analysis and holding because the issue presented in this case involved the regulation of First Amendment activities in a nonpublic forum. The petitioner's claim that the circuit court's decision is inconsistent with *Tinker v. Des Moines Community School District,* 393 U.S. 503 (1969), lacks merit because the present case does not involve an attempt to suppress a particular opinion or viewpoint. The petitioner's claim that the court's decision is inconsistent with *Police Department of the City of Chicago v. Mosley,* 408 U.S. 92 (1972), lacks merit because the present case does not

involve the regulation of First Amendment activities on public property which is by tradition or designation a forum for public communication.

REASONS FOR DENYING THE WRIT

I. The decision reached below is consistent with the applicable decisions of this Court regarding state regulation of students' First Amendment activities in public schools and universities.

The issue considered by the court below was whether North Carolina State University's Solicitation Policy which prohibited all door-to-door solicitations in student residence halls, except door-to-door campaigns, by candidates for student government office, violated the petitioner's First Amendment right to freedom of speech. The court held that the policy did not violate any of the petition's First Amendment rights. The court based that decision on this Court's analysis and holding in *Perry Education Assn., v. Perry Local Educators' Association, supra.*

First, the circuit court examined the character of the property at issue to determine whether it was a traditional public forum, a designated public forum or a nonpublic forum. Relying upon the district court's finding and a prior decision in this case, the court held that the residential areas of the dormitories on the NCSU campus were neither by tradition nor designation public forums for communicative purposes. Therefore, the circuit court held that the property at issue fell into the nonpublic forum category. Appendix to Petition, pp. 8a-10a.

Having determined that the case involved the

regulation of expressive activities in a nonpublic forum, the court then went on to determine whether the Solicitation Policy's "distinction between religious and political solicitation is reasonable and 'not an effort to suppress expression merely because (of opposition to) the (religious) speaker's view." *Perry,* (460 U.S. at 46)." Appendix to Petition, p. 9a. At the conclusion of its analysis the court determined that the Solicitation Policy did draw a reasonable distinction between the petitioner's activities and those of student political candidates. The Court also found that the University's enforcement of the Solicitation Policy was not an effort to suppress the petitioner's expression merely because the University was opposed to his views. Therefore, the circuit court affirmed the district court judgment dismissing the petitioner's claims against the respondents. Appendix to Petition, p. 12.a.

The petitioner first complains that the court below should not have analyzed the issue in this case under the reasonableness standard utilized by this Court in *Perry.* The petitioner contends that his claims should have been analyzed in accordance with the material and substantial disruption standard utilized by this Court in *Tinker v. Des Moines Independent Community School District, supra.* This argument ignores the fact that *Tinker* involved an attempt by school officials to suppress a particular expression of opinion simply because they feared that the students' symbolic expression of an unpopular viewpoint might cause a disturbance in the schools. *Id.* at 508-509.

The respondents contend that the analysis and holding in *Tinker* is not applicable to the present case. The University has never attempted to prohibit the expression of one particular opinion, but rather has acted to regulate a certain form of expressive conduct irrespective of the speaker's message. The distinction between those two forms of regulations is significant. In reaching its decision

in *Tinker* this Court specifically noted:

> "It is also relevant that the school authority did not purport to prohibit the wearing of all symbols of political or controversial significance." *Id.* at 510.

Insofar as the University in this case has attempted to regulate a certain kind of expressive conduct rather than suppress a particular viewpoint, the court below properly applied the analysis and holding of *Perry* rather than *Tinker.*

The petitioner also contends that the lower court's analysis is inconsistent with this Court's decision in *Police Department of Chicago v. Mosley, supra.* The decision in *Mosley* dealt with a content based restriction of First Amendment activities on streets and sidewalks, areas which the Court has recognized to be among the "quintessential public forums." *Perry*, at 45. The petition attempts to bring the present case within the scope of the Court's holding in *Mosley* by claiming that the entire University campus is an open forum for purposes of student First Amendment activities. The petitioner's claim that the University is an open forum for all students, however, has no support in any precedent of this Court. In fact, the Court has specifically stated that students do not have an absolute constitutional right of access to all university buildings or grounds. *Widmar v. Vincent,* 454 U.S. 263, 267, fn. 5 (1981); *See also, Grayned v. City of Rockford*, 408 U.S. 104, 117-118 (1972); *Perry Education Assn. v. Perry Local Educators' Assn., supra* at 44 (1983).

Finally, the petitioner contends that it was inappropriate for the Court below to utilize the *Perry* analysis and standard because that decision pertains only to situations where a speaker is *seeking access* to a forum, whereas in this case the petitioner already had access to the student residence halls by virtue of his student status. The petitioner

complains that the decision reached by the court below "is equivalent to the school administration in PERRY permitting the recognized faculty union to use the intra-school mailboxes, *but censoring the content* of the recognized union's printed matter." Petition, p. 19.

This argument overlooks three facts. First, the student status which gave the petitioner his initial access to the student residence halls was itself conditioned on his willingness to abide by the appropriate University regulations, one of which was the Solicitation Policy. Second, the argument overlooks the fact that the issue before the Court in *Perry* was not simply one of access to the forum in question. The Perry Local Educators' Association (PLEA) was simply a group of teachers, each of whom had personal access to the internal mail system of the school district. *Perry*, *supra* at 39. Thus, like the petitioner, the members of PLEA already had acess to the forum in question. The issue before the Court in *Perry* was whether those members could use that access to distribute mail pertaining to the PLEA's positions and activities. Finally, this argument overlooks the fact that the school administrators in *Perry* did not grant the Perry Education Association (PEA) unlimited access to the interschool mailing system. The PEA's access to the mail system was limited to messages which the PEA found necessary to disseminate in its official capacity as representative of the teachers. There was nothing in the record in *Perry* to indicate that the school administrators did not restrict PEA's mailings to messages dealing with official union business. *Perry*, *supra* at 53, fn. 13.

Following the decision in *Perry*, the court below upheld the constitutionality of the University's Solicitation Policy because it pertained to expressive activities in a nonpublic forum, it was reasonable, and it was not an effort to suppress the petitioner's speech merely because school

officials opposed his views. This Court has on more than one occasion stated that university officials have the right to impose reasonable restrictions on First Amendment activities on the campuses of public universities. *Perry Education Assn. v. Perry Local Educators', supra; Widmar v. Vincent, supra; Healy v. James,* 408 U.S. 169, 189 (1972). Thus, the petitioner's claim that the lower court's decision is in conflict with the applicable decisions of this Court is incorrect.

II. The case does not present issues of great public importance.

The petitioner contends that the case presents an issue of great public importance because the decision of the court below permits officials of state supported universities to prohibit all expressions of religious views by dormitory residents. This is not true. The Solicitation Policy at issue permits the petitioner to engage in a wide variety of expressive activities across the entire campus, in the residence hall lobbies, in his dormitory room and in those dormitory rooms to which he is invited. The only activity prohibited under the policy is *door-to-door solicitation* in the residential portion of the dormitories. This slight restriction on the petitioner's expressive activities is more than justified by the University's interest in preserving the security and privacy of students who otherwise live their entire lives in the public classrooms, dining halls, buildings and campus of the University. Furthermore, the petitioner's personal plea for access to the residence halls overlooks the fact that the University cannot reasonably permit him to conduct door-to-door solicitations without honoring the request of every other student to engage in similar behavior. The University has a right to consider the total impact of its policies and need not accommodate the petitioner's

special interest simply because a personal exemption would have a negligible impact on the interest protected by the policy. *Heffron v. International Society for Krishna Consciousness,* 452 U.S. 640, 652-654 (1981).

CONCLUSION

Insofar as the petitioner has failed to show that the court below decided the question at issue in a way in conflict with applicable decisions of the Court and has failed to show any other special or important reason for granting a writ of certiorari in this case, the respondents respecfully request that the Court deny the petition for writ of certiorari.

Respectfully submitted,

LACY H. THORNBURG
Attorney General

Edwin M. Speas, Jr.
Special Deputy Attorney General

Thomas J. Ziko
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
Telephone: (919) 733-7387

Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document has been mailed in the United States Mail, Postage prepaid to:

Thomas F. Loflin III
Box 1315
Durham, North Carolina 27702

This the 6th day of March, 1985.

_____

Edwin M. Speas, Jr.
Special Deputy Attorney General